



PATENT

Attorney Docket No. 189334

Date: October 25, 1999

In re Application of: Wayne J. Breda et al.
 Serial No. 09/238,950
 Filed: January 27, 1999
 For: INTRAVENOUS EQUIPMENT HANGERS

GAU3632

ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

Sir:

Transmitted herewith is a response to an office action in the subject application.

- ☒ Small entity status of this application under 37 C.F.R. §§ 1.9 and 1.27 has been established by a verified statement previously submitted.
- ☐ A verified statement to establish small entity status under 37 C.F.R. §§ 1.9 and 1.27 is enclosed.
- ☒ Petition For Extension Of Time
- ☐ Applicant(s) petitions for a one-month extension of time under 37 C.F.R. § 1.136, the fee for which is \$110.0 (enclosed).
- ☒ Applicant(s) believes that no petition for an extension of time is necessary. However, to the extent that such petition is deemed necessary, applicant(s) hereby petition for a sufficient extension of time to render the present submission timely. Please charge Deposit Account No. 12-1216 for the appropriate petition fee.
- ☒ No additional claim fee is required.
- ☐ Other:


The claim fee has been calculated as shown below:

					SMALL ENTITY		OTHER THAN A SMALL ENTITY	
CLAIMS REMAINING AFTER AMENDMENT			HIGHEST NUMBER PREVIOUSLY PAID FOR	EXTRA CLAIMS PRESENT	RATE	ADDIT. CLAIM FEE	RATE	ADDIT. CLAIM FEE
TOTAL	23	MINUS	23	= 0	x 9=	\$ 0	x 18=	\$
INDEPENDENT	2	MINUS	3	= 0	x 39=	\$ 0	x 78=	\$
<input type="checkbox"/>	FIRST PRESENTATION OF MULTIPLE CLAIM				+ 130=	\$ 0	+ 260=	\$
					TOTAL	\$ 0	TOTAL	\$

- ☐ Please charge my Deposit Account No. 12-1216 in the amount of \$. A duplicate copy of this sheet is attached.
- ☐ A check in the amount of \$ is attached.
- ☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 12-1216. A duplicate copy of this sheet is attached.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims.
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17.

Respectfully submitted,

LEYDIG, VOIT & MAYER, LTD.

By 
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One of the Attorneys for Applicant(s)

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 TC 3600 MAIL ROOM



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PATENT
Attorney Docket No. 189334

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Wayne J. Breda et al.

Serial No. 09/238,950

Filed: January 27, 1999

For: INTRAVENOUS EQUIPMENT
HANGERS

Group Art Unit: 3632

Examiner: David Heisey

RESPONSE

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

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This is in response to the Office Action dated September 23, 1999.

The Office Action dated September 23, 1999 presented a requirement for restriction under 35 U.S.C. § 121 as among three patentably distinct species of the claimed invention defined by the Examiner as follows:

Species I, which reads on Figures 1-5 and Claims 7-13 and 23;

Species II, which reads on Figures 6 and 7 and Claim 6;

Species III, which reads on Figure 10 and Claims 16, 17 and 21.

Further, Applicants were required to elect a single disclosed species for prosecution on the merits if no generic claim is finally held to be allowable.

Applicants provisionally elect the Species III. Claims readable on that specie include at least claims 1-6 and 14-23.

Please note that Applicants do not concur in the inference by the Examiner that claim 6 is limited to Species II or that claim 23 is limited to Species I. At least claims 1-6, 15, 18, 20, 22 and 23 are deemed to be generic to all embodiments illustrated in the drawings.

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It is submitted that this application includes allowable claims which cover all of the species of Figs. 1-12.

Further, it is submitted that the Examiner has not set forth a prima facie case in support of the restriction requirement. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent or distinct as claimed, and (ii) there must be a serious burden on the Examiner if restriction is not required. M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803: "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Here it appears likely that the inventions of the various species are classified in the same classes and probably the same or overlapping subclasses. In any event, it is highly likely or even conclusive that a search as to the invention of any of the species would overlap to a significant extent (if not entirely) with a search as to the invention of the elected species. This is confirmed at least in part by the Examiner's reservation of the possibility of citing the same prior art, evidence or admission against claims specific to any non-elected species, as stated in the last sentence of the first paragraph on page 3 of the subject Office Action. For these reasons, no undue burden would be placed upon the Examiner to search and examine the inventions of the non-elected species at the same time as the elected species. Accordingly, applicants respectfully request reconsideration and withdrawal of the restriction requirement in its entirety. In the alternative, applicants respectfully request the withdrawal of the requirements between "Species II" and "Species III".

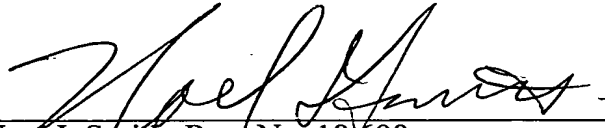
The matters noted in the Notice of Draftpersons Drawing Review will be attended to in due course of the prosecution of this application.

Receipt of the initialed copy of the Form PTO-1449 is noted with appreciation.

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It is submitted that the claims herein define patentable invention. Consideration of those claims on the merits and allowance are requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Noel I. Smith", is written over a horizontal line.

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CERTIFICATE OF MAILING

I hereby certify that this RESPONSE (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Date: October 25, 1999

